*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION NO. 21368 of 2006

% FRIDAY, 22ND DAY OF DECEMBER, TWO THOUSAND SIX

E. Ram Reddy S/o Late Ganga Reddy
70 years, Occupation Advocate,
H.No.3-4-760/1, Barkatopura,
Flat 303, Amrit Chaya Apartments,
Hyderabad.

… Petitioner

versus

$ The District Collector,
Nizamabad District
And others

… Respondents

! Counsel for the petitioner : Mr. T.V.Rajeevan

^ Counsel for the respondents : Government Pleader for Revenue

< Gist :

>Head Note:

? 1 AIR 1993 SC 2517
2 (1901) AC 495

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 21368 OF 2006

Between :

E. Ram Reddy S/o Late Ganga Reddy,
Advocate, Hyderabad.

… Petitioner

And :

The District Collector, Nizamabad District,
And others

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 21368 OF 2006

ORAL ORDER :

Heard the petitioner in person and the learned Government Pleader for Land Acquisition on behalf of the respondents.

This case illustrates yet again the disregard of the legislative mandate [of the provisions of the Land Acquisition Act 1894 ('the Act')], by the executive branch of the State.

The petitioner assails the acquisition process including

the Draft Notification u/Sec.4(1), (dispensing with the salutary process of inquiry u/Sec.5A of the Act by irrational and unwarranted invocation of urgency u/Sec.17) and the wholly inexplicable failure of the State to tender and pay 80% of the estimated compensation amount.

As the substantive facts are admitted this court prefers to record the flow of events from the counter affidavit filed by the 1st respondent – the District Collector, Nizamabad :

A) On the instructions of the State Government the Nodal Officer, the M.R.O. and the M.D.O. of Balkonda Mandal, Nizamabad District conducted "Prajala Vaddaku Palana" in 1998. At this event the people of Venchiriyal village belonging to the weaker sections represented to the Nodal Officer to provide house sites. In response 3rd respondent along with the Mandal Surveyor and the Panchayat Secretary of the village inspected the lands in the village and identified an extent of Ac.4.23 gts, in Sy.No. 4 as suitable for house sites. The 3rd respondent was also satisfied that there were no Government or poramboke lands available in the village. The 3rd respondent selected the above land for acquisition and submitted proposals. The Notification u/Sec. 4(1) was initially published in the District Gazette on 12.10.1998. Thereafter, realizing that the means did not match the desire, the notification was withdrawn u/Sec. 48(1). The withdrawal was also notified in the District Gazette.

B) The petitioner, one of the land owners, filed W.P.No. 11361 of 2003 questioning the withdrawal notification and seeking a direction for payment of compensation. The writ petition is stated to be pending.

C) In the year 2003 the villagers (who had earlier represented during 'Prajala Vaddaku Palana' in 1998) reiterated their demand for house sites. The 1st respondent thereupon reactivated the acquisition proposals. Eventually the Notification u/Sec.4(1) along with a Draft Declaration u/Sec.6 was published in the District Gazette Nos. 52 and 53, on 14.11.2003. The local publication in the daily press and in the locality ritually followed. Admittedly urgency was invoked and inquiry u/Sec.5A dispensed with. Notices u/Sec. 9(1) and 10 are stated to have been put on the notice board of the Gram Panchayat and notices u/Sec. 9(3) and 10 were issued on 7.8.2006 scheduling the date for the award enquiry on 25.8.2006.

D) Though the land in Sy.No.4 of the village is in the name of 9 persons including the petitioner, notices u/Sec. 9(3) and 10 though issued to all interested persons, were not communicated to three of them. The other six including the petitioner have received the notices on 10.11.2006.

E) Advance possession of the land was taken on 20.3.2004,under a panchanama.

F) The acquisition process has not lapsed though the award was not passed within two years of the Notification u/Sec.4(1). Since advance possession of the land was taken (on 20.3.2004), the acquisition did not lapse, as Sec.11A has no application.

G) Since the petitioner returned from the USA he cannot claim that he is solely dependent on the land proposed for acquisition (implication being that not tendering or paying 80% of the estimated compensation amount, in violation of Sec.17-3A, is of no consequence).

On 17.11.2006 the learned Government Pleader for Land Acquisition was directed to obtain instructions from the respondents as to the relevant dates on which the acquisition process was pursued including the date on which possession of the land was taken and whether 80% of the estimated compensation amount was tendered and paid to the petitioner. On 20.11.2006 the 1st respondent was directed to file a counter affidavit *inter alia* spelling out the disciplinary proceedings, if any, initiated or proposed to be initiated against the person or persons responsible for failing to tender/deposit 80% of the estimated compensation amount as mandated u/Sec.17 of the Act in view of the advance possession taken.

The counter affidavit of the 1st respondent (filed on 28.11.2006) is conspicuously, perhaps consciously silent on the aspect whether disciplinary action was initiated by the State or the 1st respondent for the blatant transgression of the mandate of Sec. 17(3-A) of the Act.

Sec.17 sets out the special powers available in cases of urgency. Sec.17(1) enacts that in cases of urgency whenever the Government or the District Collector directs, the Collector, though no award has been made, on the expiration of fifteen days from the publication of the notice mentioned in Sec.9(1), may take possession of any land needed for a public purpose, whereupon the land vests absolutely in the State free of from all encumbrances.

Sec.17 (3-A) mandates that before taking possession of any land u/Sec.17(1) or (2), the Collector shall tender payment of eighty per cent of the compensation for such land (as estimated by him) to the persons interested and entitled thereto, and shall pay it to them, unless prevented by one or more of the contingencies mentioned in Sec.31(2). Even where the

contingencies specified in Sec.31(2) exist, the Collector is required t confirm to the requirement of Sec.31(2).

It is not the case of the State that the contingencies specified in Sec.31(2) of the Act were prevalent. The 1st respondent was thus under a legal obligation to tender and pay to the petitioner and to other land owners, 80% of the estimated compensation amount, before taking possession of the land.

On admitted facts, advance possession of the land was taken on 20.3.2004 without tender or payment (to the land owners including the petitioner), 80% of the estimated compensation. There is no explanation in the counter affidavit what circumstances impelled the State and the 1st respondent to violate the clear and express legislative mandate. This grossly illegal State conduct is compounded by the silence in the counter to offer an explanation or set out a legitimate justification for the transgression by the State and the concerned State actors.

Under Sec.17(4) of the Act, in case of any land to which, in the opinion of the appropriate Government, the provisions of sub-sections (1) or (2) [of Sec.17] are applicable, such Government may direct that the provisions of Sec.5A shall not apply and if so directed, a declaration may be made u/Sec.6 in respect of land, at any time after the date of the publication of the notification u/Sec.4(1). In the case on hand urgency was invoked and a direction was issued by the 1st respondent that provisions of Sec.5A would not apply. Consequently enquiry u/Sec.5A was dispensed with and a declaration u/Sec.6 was issued and notified in the Gazette on 14.11.2003.

If urgency had not been invoked under Section 17, the State could not have taken possession of the land prior to the passing of the award (in view of the provisions of Section 16).

The provisions of Sec.17(3-A) which require the State or the Collector, as the case may be, to estimate the amount of compensation payable for the land so acquired (exercising emergency powers) and to tender and pay 80% of the such estimated compensation to the persons interested, is an integral component of the package of emergency powers u/Sec.17. The legislative purposes underlying this urgency schematic of the Act is to enable persons who are dispossessed of their land (in exercise of the powers of eminent domain of the State and in deviation of the normal process of divestiture following upon the passing of the award), is to enable them to get at least 80% of the estimated compensation amount payable for their sustenance till the process of acquisition is concluded in the fullness of time. Invoking emergency powers without complying with the statutory obligation (to pay/tender 80% of the estimated compensation) is a State conduct of extreme depravity and is a gross illegality.

Since the possession was taken after an invocation of urgency (on 14.11.2003 by the Notification u/Sec.4(1) with a simultaneous notification of the Declaration u/Sec.6 of even date), on 20.3.2004, more than 5 months after the declaration of urgency, the conclusion is compelling that there was no urgency to begin with, since at best 30 or 45 days are required to conclude even a ritual of an inquiry u/Sec.5A. At any rate a period of 5 months would have been extravagantly ample by any standard to conduct an enquiry u/Sec.5A to its conclusion. Nevertheless with zeal overtaking rational requirement a ritualistic invocation of urgency was made and advance possession taken leisurely on 20.3.2004. Since 20.3.2004 till the filing of the writ petition on 12.10.2006 the provisions of Sec.17(3-A) of the Act were not complied with and 80% of the

estimated compensation has not been tendered to the petitioner. The 1st respondent's counter is silent as to why such deposit was not made. It is represented by the learned Government Pleader for Land Acquisition that 80% of the estimated compensation has been deposited in the Civil Court on 19.11.2006 pursuant to an interim order of this court dated 18.11.2006.

Defending the relief sought in the writ petition the respondents contend that even if 80% of the estimated compensation was not paid (as mandated by Sec.17(3-A) of the Act), the notification u/Sec. 4(1) and the acquisition is nevertheless valid. Reliance for this position is placed on a decision of the Supreme Court in ***Satendra Prasad Jain and others v State of U.P. and others ([1])***. The factual substrate of this judgment, in the context of the observations made in para-16 of the AIR report (on which reliance is placed) must be considered. This is so since *"Every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but govern and are qualified by the particular facts of the case in which such expressions are to be found ([2])"*.

The land of the appellants (before the Supreme Court) was proposed for notification. The Notification u/Sec.4(1) was issued on 29.7.1986; urgency u/Sec. 17(4) was invoked and inquiry u/Sec.5A dispensed with. On 24.10.1986 Sec. 6 Declaration was issued. Sec. 9(1) notice was published on 2.11.1986. The appellant assailed the acquisition proceedings by a writ in Allahabad High Court. The writ petition was dismissed on 19.1.1987. Acquisition proceedings were up held

up holding the invocation of urgency. On 27.2.1987 possession of the land was taken by the respondents 1 and 2 from the appellants and handed over to the 3rd respondent, the beneficiary (the requisition department). A SLP filed by the appellants against the judgment of the High Court was dismissed on 19.4.1987. On 13.1.1989 the requisition department resolved to exclude from acquisition the land of the appellants on account of inadequate funds with it and for other strategic reasons. On 10.8.1989 the appellants filed a writ petition seeking compensation for the lands that were proposed for acquisition and advance possession taken. The petitioners sought a direction to the respondents to publish an award. On 27.6.1990 the LAO wrote to the requisitioning respondent that compensation for the purpose of making award had been claimed from the 3rd respondent but the said respondent had not made the amount available and therefore the period of two years having expired on 18.1.1989 (excluding the time of stay granted in the earlier litigation) the acquisition has lapsed. On 8.2.1991 the Allahabad High Court dismissed the writ petition upholding the contention on behalf of the State Agency that in view of the provisions of Sec.11A of the Act the acquisition has lapsed on expiry of period of more than 2 years since the date of declaration u/Sec.6 and that the fact of mere possession has been taken pursuant to Sec.17(1) would not disapply the provisions of Sec.11A. Here was the fact situation where the owner of the land was not assailing the acquisition. He wanted the acquisition to proceed to its normative conclusion of passing of an award as he had already been dispossessed. 80% of the estimated compensation amount was not tendered or paid to the appellants. The observations in paras 14 to 16 are recorded after an analysis of the scheme of the provisions of the Act

relating to invocation of urgency and taking of possession outside the normal procedure u/Sec. 11 and 12 of the Act. The observations by the Supreme Court in the factual context recorded to above are set out in paras 14 to 16 and read as under:

> "(14) Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.
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> (15) Further, Section 17(3-A) postulates that the owner will be offered an amount equivalent to 80 per cent of the estimated compensation for the land before the Government takes possession of it under Section 17(1). Section 11-A cannot be so construed as to leave the Government holding title to the land without the obligation to determine compensation, make an award and pay to the owner the difference between the amount of the award and the amount of 80 per cent of the estimated compensation.
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> (16) In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Sec. 17 (3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the 1st respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special

> Land Acquisition Officer dated 27/-6/1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that, therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

The observations in paragraph-16 of ***Satyendra Prasad Jain*** (1 supra) are significant. On facts, the requisitioning authority – the 3rd respondent had pleaded that the acquisition proceedings had lapsed. The decision does not lay down the principle that the provisions of Sec.17(3-A), (as to the requirement of payment of 80% of the estimated compensation), is merely indicative and not mandatory. The Apex Court did not countenance the stand of a defaulting party who had occupied the land, refused to deposit the compensation amount and was pleading lapse of the acquisition proceedings. In the case on hand the petitioner landowner does not seek culmination of the acquisition proceedings. The petitioner is gravely prejudiced as the respondents had fraudulently and without reasonable cause invoked urgency where there was none, as is apparent from their admitted conduct i.e., in not having taken possession of the land for over 5 months from the date of simultaneous publication of the Notifications u/Secs. 4 and 6, on 14.11.2003. The possession was admittedly taken on 20.3.2004. He is also aggrieved that 80% of the estimated compensation amount as required to be tendered u/Sec.17(3-A) was not tendered and paid to him or even deposited in the Civil Court, as mandated. There is also no explanation offered, why the award was not passed for over 3 years since the notification u/Sec. 4(1) [14.11.2003]. Vague and jejune excuses are offered in the counter viz., that some of the persons interested have not yet

received the notices. Presumably the award will await till all the beneficiaries walk into the offices of the respondents 1 to 3 and offer their explanations and attend the award enquiry. This is how the 1st respondent performs its obligations under the Act in a fact setting where urgency was invoked u/Sec.17 of the Act. The land owners are entitled to the economic fruits of the compulsory acquisition of their property, within a reasonable period and during their lifetime.

The learned Government Pleader, faced with the piquant situation of the irredeemable unlawful conduct of the respondents 1 to 3 at every stage of this acquisition, would however submit that it would not be in the over all public interest to invalidate the acquisition, on account of the delinquent conduct of a few State actors. According to the learned Government Pleader it would have pejorative impact on the beneficiaries. The learned Government Pleader however offers no defense to the inexplicable conduct of the respondents 1 to 3 and does not attempt to harmonize the State action with the provisions of the Act.

However, since the acquisition is for the benefit of the weaker sections and possession was taken on 20.3.2004 and the writ petition filed more than 2 ½ years later on 20.10.2006, this court is not inclined to quash the acquisition though this court is prima facie, satisfied that the invocation of urgency in the fact situation is an unwarranted, irrational and colorable exercise of statutory power. Possession having been taken on 20.3.2004 more than 5 months after the notifications u/Sec. 4(1) and 6 belay the urgency and invalidates the satisfaction recorded for invoking urgency. However, since the petitioner has not chosen to challenge the validity of the notification u/Sec. 4(1) or the invocation of urgency, within a reasonable time after

possession was taken on 20.3.2004, this court is not inclined to invalidate the acquisition wholly.

The writ petition is in the circumstances, allowed directing the 1st respondent to pass or cause to be passed the award within thirty (30) days from today. As 80% of the estimated compensation amount, which ought to have been tendered/paid/deposited before possession was taken *(emphasis)* on 20.3.2004, (*qua* the mandate u/Sec. 17(3-A) of the Act); and as the respondents have violated the obligation enjoined by the Act and without just and reasonable cause and thereby caused prejudice and injury, this court considers it appropriate to impose costs of Rs.50,000/- (Rupees Fifty Thousands only) on respondents 1 to 3, jointly and severally. Of this amount, Rs.10,000/- shall be paid to the petitioner and Rs.40,000/- to the Secretary, AP State Legal Services Authority, Hyderabad, within four (4) weeks from the date of receipt of a copy of this order.

This court hopes and trusts that the appropriate level of the Government will identify the officers responsible for non-compliance with the mandatory provisions of Sec.17(3-A) of the Act and initiate appropriate proceedings against them to avoid recurrence of such unlawful conduct. The State is also at liberty to identify the officers responsible and to take steps to recover the costs imposed herein from such officers, as it is the unlawful and wholly arbitrary conduct of State civil servants which has led to the injury to the petitioner, defiance of the legislative mandate and consequently the imposition of these costs. The State shall not mulct the citizens with this avoidable expenditure consequent on the mal-performance of public officials.

A copy of this order shall be communicated to the Chief

Secretary to the Government of Andhra Pradesh, Hyderabad, for appropriate administrative consideration and action, in the light of the observations recorded.

The writ petition is allowed as above with costs.

Dated: 22.12.2006 ----------

LR copy to be marked: **Yes**/No Justice G.Raghuram

(B/o)

pvsn

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[1] AIR 1993 SC 2517

[2] Lord Halsbury in Quin v Leathem (1901) AC 495